

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, May 8, 2018)

501 KAR 16:330. Lethal injection protocols.

RELATES TO: KRS 196.030, 196.070, 196.180, 431.213 – 431.270

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.218, 431.220, 431.224, 431.240, 431.250, 431.260, 431.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the Cabinet or any of its divisions. KRS 431.220 establishes requirements for the execution of the death penalty. This administrative regulation establishes the protocols for execution by lethal injection.

Section 1. Procurement, Storage, and Accountability of Execution Substances. (1) Upon receipt of an execution order, the warden shall check the supply of substances and their expiration dates. If a substance is~~[additional substances are]~~ needed, the warden shall place an order to obtain the necessary substance~~[substances]~~ for the lethal injection protocol~~[protocols]~~ listed in Section 3 of this administrative regulation.

(2) The substance~~[substances]~~ shall be stored according to any~~[the]~~ manufacturer's instructions~~[, if applicable,]~~ and placed in a secured area of the penitentiary in a locked container~~[containers]~~. The warden shall maintain control of the keys to the secured areas and container~~[containers]~~.

(3) A log shall be maintained in the storage container~~[containers]~~ which shall record:(a) New supply~~[supplies]~~ of a substance~~[substances]~~ received and added to inventory;

(b) Substance~~[Substances]~~ removed for use;

(c) Disposal of substance~~[substances]~~ due to expiration; and

(d) Any other reason that a substance is removed or deducted from inventory.

Section 2. Preliminary Steps. (1) The condemned person shall be executed by using the~~[One Drug]~~ Protocol in Section 3~~[(2)]~~ of this administrative regulation. ~~[If the necessary substance or quantity of the substance for the One Drug Protocol is not in the warden's possession by seven (7) days prior to the execution, the condemned person shall be executed by using the Two Drug Protocol in Section 3(3) of this administrative regulation. The commissioner shall notify the condemned person at least seven (7) days prior to the execution of the protocol to be used.]~~

(2) The penitentiary shall have a minimum of three (3)~~[two (2)]~~ phones that may be used simultaneously~~[phone lines]~~ available for communication with the courts and counsel on the day of execution. The warden shall determine if necessary phones~~[shall be checked to determine if they]~~ are operational prior to the execution.

(3) If the condemned person is to be executed by lethal injection:

(a) If male, his chest shall be shaved by a designated member of the execution team for heart monitor leads on the day of execution; and

(b) The IV team shall complete an examination of the condemned person's veins within twenty-four (24) hours prior to the execution to determine possible locations of the IV sites.

(4) On the day of execution the warden shall provide to the IV team a sufficient amount~~[amounts]~~ of one of the substances~~[each substance]~~ listed in Section 3~~(1)~~ of this administrative regulation to prepare primary and backup~~[two (2)]~~ syringes for the substance ~~[drug]~~

~~protocol selected]~~ to be used.~~[One (1) syringe shall serve as the primary syringe. The other syringe shall be a back-up.]~~

(5) At the execution building, ~~the~~each substance and saline shall be ~~[prepared in accordance with the manufacturer's instructions, if applicable, and]~~ drawn into the primary and back-up~~[two (2)]~~ syringes by one (1) member of the IV team designated by the warden in accordance with Section 3 of this administrative regulation. The other member of the IV team shall observe preparation of the substance~~[substances]~~ and verify that the instructions and procedures have been carried out correctly.

(6) Any syringe that is~~[syringes that are]~~ loaded with a substance~~[lethal injection substances]~~ that is~~[are]~~ not used during the execution shall be destroyed and documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(7) Any unused substance that was~~[substances that were]~~ not prepared for the execution~~[lethal injection]~~ shall be:

- (a) Returned to the warden;
- (b) Locked in the storage container; and
- (c) Documented in the log maintained in accordance with Section 1(3) of this administrative regulation.

(8) A member of the IV team shall determine the appropriate size needle based on the examination of the condemned person's veins within the five (5) hours prior to the execution.

(9) The warden shall order the condemned person escorted to the execution chamber and strapped to the gurney.

(10) The IV team shall run the IV lines to the condemned person by selecting a site and inserting the following:

- (a)~~[Site and insert]~~ One (1) primary intravenous (IV) catheter ~~[line]~~; and
- (b)~~[Site and insert]~~ One (1) backup IV catheter~~[line]~~.

(11) Location of the IV catheters.

(a) The location of the IV catheters~~[sites]~~ on the body of the condemned person shall be determined by the IV team members. The insertion site of preference shall be the following order:

- 1.[(a)]** Arms;
- 2.[(b)]** Hands;
- 3.[(c)]** Ankles; or
- 4.[(d)]** Feet.

(b) The neck shall not be used for an IV catheter.

(12) To best ensure that a catheter~~[needle]~~ is inserted properly into a vein, the IV team members shall look for the presence of blood in the hub~~[valve]~~ of the catheter~~[sited needle]~~.

(13) If the IV team cannot secure two (2) IV catheters~~[sites]~~ within a reasonable time, not to exceed two (2)~~[three (3)]~~ hours~~[one (1) hour]~~, the Commissioner shall notify the Governor's Office that the execution has been suspended until a new execution order is received~~[contact the Governor's Office and request that the execution be scheduled for a later date]~~.

(14)~~[If the IV team is able to establish the two IV catheters with IV tubing][lines][,]~~ The team shall start a saline flow as it establishes a catheter with IV tubing. A member of the execution [IV] team shall observe the IV to ensure that the flow is uninterrupted.

(15) The execution team shall:

- (a) Securely connect the electrodes of the cardiac monitor to the condemned person; and
- (b) Ensure the equipment is functioning.

(16) Counsel assigned by the cabinet and counsel assigned by the office of the Attorney General shall be asked whether any stays, orders, pardons, or commutations of sentence have been received.

(17) The viewing curtain shall be opened.

(18) The warden shall announce the execution to the witnesses.

(19) The warden shall ask the condemned person if he wants to make a final statement and provide a brief opportunity of not less than two (2) minutes for him to do so. The warden may impose reasonable restrictions on the content and length of the statement. The warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses. The witnesses shall be allowed to hear the condemned person's statement.

(20) The warden shall order the execution to proceed.

Section 3. Protocol[Protocols and Sequence of Substances]. (1) One (1) of the following substances under whatever name it may be known or sold by, including generic, trade, brand, or other name, may be used:

(a) Pentobarbital; or

(b) Thiopental sodium.

(2) For the substance being used for the execution, the following syringes shall be prepared for both the primary and backup IVs:

(a) For pentobarbital:

1. Sufficient syringes shall be prepared for a total of five (5) grams of pentobarbital;

2. The five (5) grams may consist of two (2) syringes prepared with two and five-tenths (2.5) grams of pentobarbital for a total of five (5) grams/100 milliliters of solution; and

3. A separate syringe shall be prepared with saline to flush the line; or

(b) For thiopental sodium:

1. Sufficient syringes shall be prepared for a total of five (5) grams of thiopental sodium;

2. The five (5) grams may consist of four (4) syringes prepared with 1.25 grams/50 milliliters; and

3. A separate syringe shall be prepared with saline to flush the line.

(3) The flow of saline through the IV to be used shall be discontinued.

(4) The five (5) grams of the selected substance and saline shall be administered.

(5) A stopwatch shall be started after the injection of the final syringe.

(6) During the injection the warden and deputy warden shall watch the primary IV for failure, leakage, the catheter coming out of a vein, or any other problem. If the IV fails or leaks, the catheter comes out of the vein, or any other significant problem arises, the execution team shall be instructed to switch to the backup IV.[The lethal injection protocols shall be as follows.

(2) One Drug Protocol.

(a) A designated execution team member shall inject via IV three (3) gm of Sodium Thiopental (60 ml of a 50mg/ml solution) or five (5) gm of Pentobarbital (100 ml of a 50 mg/ml solution) under whatever generic or trade names they may be known or sold.

(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of the Sodium Thiopental or Pentobarbital in the primary site and order that the back-up IV be used with a new flow of the substance.

(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.]

(7)[(d)] A designated execution team member shall:

(a)[1.] Observe the heart monitor; and

(b)[2.] Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

(8)[(e)] The viewing curtain shall be drawn before the:

(a)[1.] Coroner enters the chamber to declare death; and

(b)[2.] Physician enters the chamber to certify the cause of death.

(9) If the heart monitor does not show a cessation of electrical activity of the heart after twenty (20) minutes of all injections through the primary IV, then the Warden shall order the injection of the substance and saline contained in the backup syringes be administered through the backup IV in accordance with this section.

(10) If death does not occur within a sufficient time after all injections through the backup IV, the Commissioner shall notify the Governor's Office that the execution has been suspended until a new execution order is received. **The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 5(1) of this administrative regulation/subsection (1) of section 5**.[(f) An additional injection of the substance in the same dose and concentration listed in paragraph (a) of this subsection shall be used if the:

1. Heart monitor does not indicate a flat line after ten (10) minutes;
2. Coroner is not able to declare death; and
3. Physician is unable to certify the cause of death after the ten (10) minute period.

~~(g) The injections shall continue until death has occurred.~~

~~(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execution team shall be instructed to switch to the backup IV.~~

~~(3) Two Drug Protocol.~~

~~(a) A designated execution team member shall inject via IV ten (10) mg of midazolam (5mg/ml concentration) and 40 mg of hydromorphone (10 mg/ml concentration) under whatever generic or trade names they may be known or sold.~~

~~(b) If it appears to the warden based on his visual inspection that the condemned person is not unconscious within sixty (60) seconds of his command to proceed, the warden shall stop the flow of midazolam and hydromorphone in the primary site and order that the backup IV be used with a new flow of the substances listed for this protocol in paragraph (a) of this subsection.~~

~~(c) A designated execution team member shall start a stopwatch once the lethal injection is complete.~~

~~(d) A designated execution team member shall:~~

1. Observe the heart monitor; and
2. Advise the coroner and physician when electrical activity of the heart has ceased as indicated by a flat line on the heart monitor.

~~(e) The viewing curtain shall be drawn before the:~~

1. Coroner enters the chamber to declare death; and
2. Physician enters the chamber to certify the cause of death.

~~(f) Except as described in paragraph (g) of this subsection, an additional injection of the [lethal] substances in the same doses and concentrations listed in paragraph (a) of this subsection shall be used if the:~~

1. Heart monitor does not indicate a flat line after ten (10) minutes;
2. Coroner is not able to declare death; and
3. Physician is unable to certify the cause of death after the ten (10) minute period.

~~(g) Any additional injections after the initial and second injections shall be sixty (60) mg of hydromorphone (10 mg/ml concentration). The injections shall continue until death has occurred.~~

~~(h) During the execution by lethal injection the warden and deputy warden shall watch the primary IV site for failure, leakage, the catheter coming out of a vein, or any other problem. If an IV fails or leaks, the catheter comes out of the vein, or any other problem arises, the execu-~~

~~tion team shall be instructed to switch to the backup IV.]~~

Section 4. Post Lethal Injection Steps. (1) If the Coroner declares death, the warden shall announce the completion of the execution to the witnesses. The viewing curtain shall be open during the warden's announcement.

(2) The witnesses shall be escorted out of the witness room.

Section 5. Stabilization Procedure. (1) Before an execution commences:

(a) The warden shall arrange for an ambulance and staff to be present on penitentiary property during the execution; and

(b) A medical crash cart and defibrillator shall be located in the execution building **in close proximity to the execution chamber**.

(2) If at any time during the execution process the Governor grants a pardon or commutes the sentence of the condemned person or if a court of competent jurisdiction issues a stay after an execution has commenced:

(a) The execution team shall stop the execution; and

(b) The medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in subsection (1) of this section.

Section 6. Volunteer. (1) If a condemned person, who is a volunteer, tells department staff that he does not wish to continue with the execution process, the staff shall tell the warden.

(2) If the execution is in process:

(a) The execution team shall stop the execution; and

(b) If any of the substances have been injected, the medical staff on site shall attempt to stabilize the condemned person with the equipment and personnel listed in Section 5(1) of this administrative regulation.

(3) The warden shall allow the condemned person to contact his attorney.

(4) The warden shall notify the commissioner.

(5) The commissioner shall notify the Governor's Office or court issuing the mandate.

JAMES ERWIN, Acting Commissioner

APPROVED BY AGENCY: April 10, 2018

FILED WITH LRC: April 13, 2018 at 9 a.m.

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